



## Department of Civil Service

ANDREW M. CUOMO  
Governor

**PAR-03-16**

### **POLICY ADVISORY REPORT**

**TO:** All Municipal Civil Service Agencies  
**FROM:** Office of Commission Operations & Municipal Assistance  
**SUBJECT:** Police Transfers - Amendments to Section 58 of the Civil Service Law  
**DATE:** April 1, 2016

**This Policy Advisory Report replaces MSD-CL-5-01, issued on March 28, 2001, regarding the voluntary transfer of police officers.**

As the result of recent legislation, this Department has received a number of inquiries regarding the appropriateness of voluntary transfers of individuals to and between municipal police positions in New York State. Therefore, we are providing the following updated guidance regarding such transfers.

When considering transfers as a mechanism to fill entry-level law enforcement positions in a police or sheriff's department, the following provisions of law and rule must be considered:

- Section 70(1) of Civil Service Law;
- The local civil service rules of the civil service agency on the receiving end of the transfer; and
- Section 58 of Civil Service Law.

Section 70(1) of the Civil Service Law governs the voluntary transfer of civil service employees between two positions in the competitive class. This section provides that no person shall be transferred to a position that requires essential tests or qualifications different from or higher than those required for the position held by the individual. Any transfers so permitted can only be made after a careful study to determine comparability of duties, minimum qualifications and examinations between the two positions.

The transfer rule of the receiving local civil service agency outlines the process for transfers into positions under their jurisdiction. The Model Rule governing transfers (and most local civil service agency transfer rules) state that when examinations' scopes and qualifications are identical, the local civil service agency has the authority to approve the transfer.

However, where the examinations' scopes and qualifications are not identical, transfer may be appropriate if the New York State Department of Civil Service has determined that the examination for the **position** held by the employee seeking transfer has essential tests and qualifications that are the same as or greater than those of the **position** to which appointment is sought. This analysis is based upon a comparison of the current tests and qualifications for both positions.

The process and form to be used to obtain a review by our Department of a proposed transfer where the essential tests and qualifications of the two positions are not identical is outlined in Policy Advisory Report, PAR-01-11 available at [www.cs.ny.gov/msd/msdonline/pars\\_only/par\\_01\\_11.pdf](http://www.cs.ny.gov/msd/msdonline/pars_only/par_01_11.pdf)

For police officer positions, the “essential tests and qualifications” include:

- The minimum qualifications of the positions, including educational minimum qualifications;
- The written test;
- The Municipal Police Training Council (MPTC) requirements as provided by section 58(1)(c) of the Civil Service Law which include the physical agility test and the medical examination; (<http://www.criminaljustice.ny.gov/ops/docs/registry/policeapptsmed.pdf>)
- Any other tests added by the local civil service agency pursuant to section 17(4) of Civil Service Law and the agency’s Civil Service Rules.

Section 58(3) of Civil Service Law defines “police officer” for purposes of meeting the minimum qualifications established in section 58(1) of Civil Service Law including the maximum age requirement.

*Section 58(3) provides: “As used in this section, the term "police officer" means a police officer in the department of environmental conservation, the state university police, a member of the regional state park police or a police force, police department, or other organization of a county, city, town, village, housing authority, transit authority or police district, who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but shall not include any person serving as such solely by virtue of his or her occupying any other office or position, nor shall such term include a sheriff, under-sheriff, commissioner of police, deputy or assistant commissioner of police, chief of police, deputy or assistant chief of police or any person having an equivalent title who is appointed or employed to exercise equivalent supervisory authority.”*

There is no legal authority for police officers to transfer to a police force or department where appointments of those police officers are not subject to the requirements of Section 58(1).

### **Which New York State police titles are eligible to transfer to municipal police positions?**

Based on the above sections of law, the following New York State job titles are sworn police officers who meet the criteria in section 58(3) of the Civil Service Law and are eligible to transfer to municipal police positions as long as the criteria in section 70(1) of the Civil Service Law and your agency’s transfer rule are met:

1. **The State University of New York (SUNY) Police Officers** - Chapter 561 of the Laws of 2015 amended section 58(3) of the Civil Service Law to include State University of New York (SUNY) police officers. This legislation became effective on December 18, 2015. As a result, the following titles in the State University of New York are sworn “police officers” and eligible to transfer to municipal police positions as long as the criteria in Section 70(1) of Civil Service Law and your agency’s transfer rule are met:

- University Police Officer 1
- University Police Officer 2
- University Police Investigator 1
- University Police Investigator 2

2. **New York State Department of Environmental Conservation (ENCON) Police** - Chapter 244 of the Laws of 2013, amended section 58(3) of the Civil Service Law to include Environmental Conservation Police Officer and Forest Ranger within the definition of police officer and are eligible for transfer.

Accordingly, the following positions in the New York State Department of Environmental Conservation are subject to the minimum qualification requirements in section 58(1) of Civil Service Law. Please note, however, that ENCON Police do not need to meet the maximum age requirement established by section 58(1)(a). Our Counsel’s Office has advised that legislative exemption from the age requirements is not a bar to transfer. The following titles are sworn “police officers” in the Division of Law Enforcement in the NYS Department of Environmental Conservation (CPL 1.2(34)(j)):

- Environmental Conservation Officer & (Spanish Language)
- Environmental Conservation Investigator 1-4
- Supervising Environmental Conservation Officer
- Chief Environmental Conservation Officer

The following titles are sworn “police officers” in the Division of Forest Protection and Fire Management in the New York State Department of Environmental Conservation (CPL 1.2(34)(v)):

- Forest Ranger 1
- Forest Ranger 2
- Forest Ranger 3
- Assistant Supervisor of Forest Ranger Services
- Supervisor of Forest Ranger Services

3. **New York State Park Police** were added to Civil Service Law, section 58(3) by Chapter 375 of the Laws of 1990 and are eligible for transfer. The following titles in the New York State Park Police are sworn “police officers”:

- Park Police Officer
- Sergeant Park Police
- Lieutenant Park Police
- Captain Park Police
- Major Park Police

We have also received confirmation that SUNY Police Officers, ENCON Police Officers and State Park Police Officers meet the MPTC requirements for appointment to police positions.

### **Which New York State police titles are eligible for reinstatement to municipal police positions?**

Civil Service Law Section 58(4)(b) was also amended to allow any person who has received a permanent appointment in the competitive class as an ENCON Police Officer, a Forest Ranger, a University Police Officer or a Park Police Officer to resign and, subject to such civil service rules as may be applicable, be eligible for reinstatement in the same police force or police department or in any other police force or police department to which he or she was eligible for transfer, without satisfying the age requirements set forth in paragraph (a) of subdivision one of section 58 at the time of such reinstatement, provided such reinstatement occurs within one year of the date of resignation.

### **Which New York State police titles cannot transfer to municipal police positions?**

New York State Troopers, New York City Police Officers and New York City Department of Environmental Protection (DEP) Police Officers, are not eligible to transfer to police officer positions in a police force or police department where appointments are governed by Section 58 of the Civil Service Law. While such individuals are statutorily designated as police officers under the Criminal Procedure Law 1.20(34), they do not meet the definition of a police officer in Civil Service Law, section 58(3).

Since these police officers are not employed by the entities listed in Section 58(3) of Civil Service Law, they are not required to meet the qualifications for appointment contained in Section 58(1). Consequently, there is no legal authority for these individuals to transfer to a police force or department where appointments of police officers are subject to the requirements of Section 58(1).

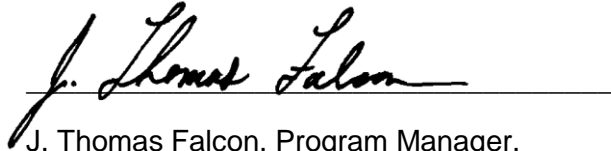
From time to time, we also receive inquiries relative to the eligibility of “out-of-state” police officers, police officers employed by the Port Authority of New York and New Jersey and federal law enforcement officers, to transfer to municipal police positions governed by section 58 of Civil Service Law. As noted above, Section 58(3) of Civil Service Law includes as part of the definition of police officer that the position “...is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state...” Consequently, an “out-of-state” police officer, a police officer employed by the Port Authority of New York and New Jersey or a federal law enforcement officer, who is not responsible for enforcing the general criminal laws of New York State is ineligible to transfer. This same provision bars an individual employed in a County Sheriff’s Department as a Civil Deputy from transferring to a position responsible for enforcing criminal laws and therefore subject to Civil Service Law, Section 58(1) qualifications.

### **Key documents when evaluating a proposed transfer of a police officer from a State agency to a municipal police department:**

- Examination Announcements: <http://www.cs.ny.gov/announarchive/search/>
- Class Standards: <http://www.cs.ny.gov/tsplan/tsp.html>
- Employment History Records: State employees seeking to transfer to a municipal police position should obtain a copy of their Employment History Record (NYSTEP record) from their agency’s Human Resources or Personnel Department. State employees can also contact our Employment Records Unit at (518) 457-4295 to make the request.

We have also prepared **Frequently Asked Questions** about Police Officers/Deputy Sheriffs which can be found at: [www.cs.ny.gov/testing/test\\_guides/police\\_q\\_a.cfm](http://www.cs.ny.gov/testing/test_guides/police_q_a.cfm)

If you have any further questions, please contact the Office of Commission Operations & Municipal Assistance, Municipal Assistance Section at (518) 473-5022 or by e-mailing [assistance.request@cs.ny.gov](mailto:assistance.request@cs.ny.gov).

A handwritten signature in black ink, reading "J. Thomas Falcon", is positioned above a horizontal line.

J. Thomas Falcon, Program Manager,  
Commission Operations & Municipal Assistance